

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Raad van State (Council of State)	
Date of the decision:	29 December 2015
Case number: ²	201501565/1/V2
Parties to the case: Alien v. the State Secretary of Security and Justice	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=86314	
Language(s) in which the decision is written: Dutch.	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Countr(y)(ies) of origin of the applicant(s): Gaza Strip.	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): The Netherlands	
Any third country of relevance to the case: ³ No.	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: - Article 1(A) - Article 1(D)
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons NA	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness NA	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa NA	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision:

Topics / Key terms:

Palestinian,

Persecution based on political opinion,

Credibility assessment,

1951 Refugee Convention,

Persons of Concern to UNRWA,

Country of origin information

Key facts (as reflected in the decision):

The State Secretary rejected the alien's application for asylum on 23 January 2015. The applicant appealed against this decision, which the Court of The Hague declared as grounded on 17 February 2015. The State Secretary appealed against this decision, arguing that the Court of The Hague has wrongly concluded that he has insufficiently considered the meaning and scope of Article 1(D) of the 1951 Refugee Convention.

The Council of State declares the appeal of the State Secretary grounded, annuls the decision of the Court of The Hague and declares the appeal in this case ungrounded.

In case the State secretary considers the asylum account not credible, further elaboration on the meaning of Article 1D in light of the El Kott decision of the European Court of Justice dated 19 December 2012, <http://www.refworld.org/docid/50d2d7b42.html> is not needed.

The situation in Gazastrip is not to be characterized as a situation of indiscriminate violence in the sense of Article 29 b Aliens Act (corresponding with Article 15c Qualification Directive).

Key considerations of the court:

2.1. As follows from point 64 of *M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, European Union: Court of Justice of the European Union, 22 November 2012, <http://www.refworld.org/docid/50af68c22.html>, establishing whether and to what extent a case will be based on facts and circumstances stated in the applicant's asylum account, precedes deciding whether these facts and circumstances qualify as grounds for granting the applicant a temporary residence permit.

From point 64 of *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal*, C-364/11, European Union: Court of Justice of the European Union, 19 December 2012, <http://www.refworld.org/docid/50d2d7b42.html> follows that this also applies to determining whether the applicant is still under protection from UNRWA. The mere circumstance that it is credible that the applicant is a Palestinian from the Gaza Strip is no a sufficient reason to grant him a refugee status.

The question whether Article 1(A) or Article 1(D) of the 1951 Refugee Convention applies, is only relevant after the flight story and the herein stated facts and circumstances are found credible.

2.2. The State Secretary considers the flight story of the applicant to be not credible. He considers it not credible that the applicant feared persecution because he criticized Hamas.

The State Secretary has not insufficiently considered the meaning of Article 1(D) of the 1951 Refugee Convention, because he considers the flight story of the applicant not credible. The Court of the Hague has wrongly not ascertained the State Secretary's position on this incredibility.

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Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

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